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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,936	12/10/2001	Gilles Bos	33900-90PUS	4569

7590

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EXAMINER

BLANCO, JAVIER G

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 01/14/2004

6

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/009,936

Applicant(s)

BOS ET AL.

Examiner

Javier G. Blanco

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because Figure 1A does not show/indicate the “circle having a diameter D0” (see claims 5-8). Although D0 is shown/indicated in Figures 1B, 1C, and 2A, it will be helpful for any reader to have that diameter shown/indicated in Figure 1A. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

2. Claims 1, 3, and 4 are objected to because of the following informalities:
- a. Regarding claim 1, please add --cylindrical-- in front of “side face” (see line 16). Appropriate correction is required.
  - b. Regarding claim 1, please add --optical-- in front of “axis” (see line 16). Appropriate correction is required.
  - c. Regarding claim 1, please add --optical-- in front of “axis” (see line 25). Appropriate correction is required.
  - d. Regarding claim 1, please add --radial-- in front of “extension” (see line 32, line 33, and line 37). Appropriate correction is required.
  - e. Regarding claim 3, please add --of-- in front of “11 mm” (see line 3). Appropriate correction is required.

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f. Regarding claim 4, please add --of-- in front of “5°” (see line 2). Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Regarding claim 1, lines 12-15 disclose that the optical portion comprises “a cylindrical side face of diameter D1 connected to the posterior optical surface of the optical portion”, while lines 18-19 discloses that the posterior optical surface “is bounded by a circle of diameter D1”. These two limitations render the claim vague and indefinite since it is not clear if “the cylindrical side face of diameter D1 connected to the posterior optical surface” is a different structure/region from “the circle of diameter D1” bounding the posterior optical surface. Are they defining the same structure/region?

b. Regarding claim 1, is each side face 30c “substantially disposed on a ruled surface of diameter D2 where  $D2 > D1$ ” (see lines 23-24), or is it the radial extensions 30, 32? From the claim language of lines 20-24, this is vague and confusing, thereby rendering claim 1 indefinite.

c. Regarding claim 2, the limitation “the lengths  $h$  and  $h'$  of the side faces (30c)” (see line 2) lacks antecedent basis.

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d. Regarding claim 4, the limitation “each haptic portion” (see line 1) lacks antecedent basis.

e. Regarding claims 5-8, to which “diameter D1” (see claim 1, lines 12-15 and lines 18-19) is line 2 of claims 5-8 referring to?

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fromberg et al. (EP 0 215 468 A2; cited in Applicants' IDS).

Fromberg et al. disclose an intraocular implant for implantation in the capsular bag of an eye (see Abstract), the implant comprises an optical portion (Figures 1 and 2: character 1) presenting an anterior optical surface and a posterior optical surface (see Figure 2), at least one haptic element (see Figures 1 and 2: character 2), each haptic element presenting a connection zone at the periphery of the optical region, which zone extends over a significant portion of the periphery of the optical portion (see Figure 1; see page 4, lines 2-5), the posterior optical surface is bounded by a circle of diameter D1 and a length  $h$  along the optical axis (see Figure 2), the implant further comprises, in each connection zone, a radial extension (see Figure 2: character 14) presenting an anterior face (facing upwards), a posterior face (facing downwards), and a side face (facing left and right), said radial extension is disposed on a ruled surface of diameter D2 ( $D2 > D1$ ) and a length  $h'$  along the optical axis, said length  $h'$  being substantially equal to  $h$  (see

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Figures 2 and 4), the posterior face of each radial extension is disposed on the spherical cap containing the posterior optical surface (see Figures 2 and 4), each haptic element being connected to the optical portion via the anterior face (see Figures 1 and 2: character 11) of the corresponding radial extension, on the outside of the anterior optical surface (see Figure 2), each radial extension constitutes a step formed by the offset between the posterior optical surface of the optical portion and the connection zone of the haptic element (see Figure 2), the side face of each radial extension forming a square-edged portion with the posterior optical surface (see Figure 2).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fromberg et al. (EP 0 215 468 A2; cited in Applicants' IDS) in view of Barrett (EP 0 391 452.A2; cited in Applicants' IDS).

Fromberg et al. disclose the invention as claimed (see 102(b) rejection above). Although Fromberg et al. disclose implanting their IOL in the capsular bag of an eye, they did not disclose the haptics forming an angle  $\alpha$  lying in the range of  $5^\circ$  to  $12^\circ$  relative to the optical plane and directed towards the anterior face of the optical portion. However, this is well known in the art. For example, Barrett discloses an IOL for capsular bag placement (see entire document) with

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haptics forming an angle (lying within the claimed range) relative to the optical plane and directed towards the anterior face of the optical portion in order to support the IOL against the capsule wall (see entire document; see Figures). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teachings of an IOL with haptics forming an angle a lying in the range of 5° to 12° relative to the optical plane and directed towards the anterior face of the optical portion, as taught by Barrett, with the IOL of Fromberg et al., in order to support the IOL against the capsule wall.

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Herman (US 4,738,680), Parekh (US 5,141,507), Brady et al. (US 5,476,513), Weiser (US 5,713,958), Paul et al. (US 6,468,306), Pham et al. (US 6,558,419), Green (US 2003/0120342), Southard (US 2003/0204257), Boehm (EP 1 108 402), and Baudouin et al. (FR 2 819 713).

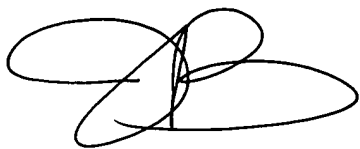
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 703-605-4259. The examiner can normally be reached on M-F (7:30 a.m.-4:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB

A stylized, handwritten signature consisting of several overlapping loops and a central vertical stroke.

January 6, 2004

A handwritten signature in cursive script, appearing to read 'David H. Willse'.

David H. Willse  
Primary Examiner